



LAPORTE COUNTY PLAN COMMISSION

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Michael Polan
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES September 27th, 2022

MEMBERS PRESENT: Adam Koronka Azad Chahal
 Rich Mrozinski Glen Minich
 John Carr Rita Beaty
 Earl Cunningham Harold Parker
 Jeff Wright

OTHERS PRESENT: Doug Biege, Attorney; Mike Polan, Recording Secretary; Ashley Kazmucha, Administrative Coordinator; Anthony Hendricks, LaPorte County Surveyor.

PLEDGE OF ALLEGIANCE

Adam Koronka asked for approval of the agenda for the September 27th meeting.

Rich Mrozinski made a motion to approve the agenda as presented.

John Carr seconded.

All approved. Motion carries 9-0.

Adam Koronka asked for approval of the meeting minutes for August 23rd, 2022.

Rich Mrozinski made a motion to approve both minutes as presented.

Rita Beaty seconded.

All approved. Motion carries 9-0.

Petitions:

- 1. Petitioner William L. Sebert Etal Trustees Trust dated 8/28/87 represented by Matt Garritano of Charles Hendricks & Associates P.C.** would like to present to the Plan Commission a primary plat for a 3 Lot Minor Subdivision to be known as "Sebert Acres Minor Sub." located immediately north of Schultz Road, east of county Road 400 West, LaPorte, IN. Center Twp. Zoned R1B consisting of 10.21 acres (parent + 3 lots). There will be no improvements needed to be placed in the subdivision. No public water or sewage facilities available. Lots will be serviced by private wells and septic. Exhibits attached hereto. Parcel 46-06-16-100-010-000-042

Attorney Biege stated notice is adequate.

Matt Garritano stated he is from Charles Hendricks and Associates Surveying and Engineering located at 512 Lincolnway, LaPorte, IN. He has provided a packet to everyone. He is presenting a three (3) lot minor with a remainder of the dominant parcel. In the petition, it states that it is a ten-point-two-one (10.21) acre tract. If they look inside the packet, the parent parcel is a ten-point-two-one (10.21), but inside the parent is a deeded exception that two-point-eight-six (2.86). It might seem a little bit confusing when people start trying to add up the acreages. There is a two-point-eight-four (2.84) acre tract and remainder of the dominant that is going to remain on that parcel ID number so they are looking at basically three (3) lots. The lots will be serviced by private well and septic. The graphical representation shows the size of the approximate houses and potential driveway locations. Obviously, trying to outlet the lot on Lot 1 onto Schultz wouldn't be efficient so it would be best to outlet the Lot 1 on 400 with a little bit safer driveway. They have also illustrated some driveway turn-arounds. Presently, it is just a tilled field. Once developed and properly seeded, they are looking at less runoff once the three (3) lots are developed. As far as zoning goes, it is presently zoned R1B. The size of the lots that they have on there meet and exceed the minimum requirements for R1B. That's what they are looking for a favorable recommendation from the Plan Commission for the three (3) lots.

Jeff Wright stated his question has to do with the Plat Committee and he is looking at the minutes and it says Michael is speaking about it being a small subdivision and there isn't any storm infrastructure on there, it is just infiltration on big lots.

Matt Garritano stated yes.

Jeff Wright asked if the property is sandy. The reason he is asking is because a couple statements later, Amanda said they will be big systems because it is all clay. Is it sand or clay?

Matt Garritano stated he doesn't know if anybody has ever made the statement that it's sandy. They are able to take septic. As far as the Health Department's concern, even with a runoff situation, they are looking at a thirty percent (30%) reduction in runoff from going from a tilled field to developed grass parcels. The engineering is there. They don't have the flooding situation now or runoff; there will be less once the lots become developed and seeded.

Jeff Wright stated he was more interested in the septic part of it. Are they looking at mound systems?

Matt Garritano stated no, they are looking at subsurface systems with perimeter drains. There is plenty of relief on site to accommodate the perimeter drains. A little history about this piece of property that he probably should have mentioned at the beginning, this was originally approved for a fifteen (15) lot subdivision. The trust didn't go through with it and it lapsed on their five (5) years and didn't finish the project. In doing so, they have decided to go a different way and they went with the larger lots with less quantity to be a little bit more congruent with the neighborhood versus fifteen (15) lots.

Jeff Wright stated Jay Sullivan, County Engineer, was at the meeting as well. Did they talk about sight lines in the driveways coming out?

Matt Garritano stated they did in a technical advisory meeting. It was all adequate. Obviously, nobody is going to intend for Lot 1 to driveway off 400 right there on the corner.

Jeff Wright asked if the sight lines on 400 are adequate as well.

Matt Garritano stated yes.

Glen Minich stated he doesn't understand the history of it exactly. It's been split. There are four (4) splits now and then they're going to address this split. On this total property, aren't there three (3) parcels above this one (1) that have already been split off that parcel.

Matt Garritano stated the trust had multiple parcel ID numbers for this area and this is the south portion of the pre-existing parcel ID number.

Glen Minich stated he doesn't see a big problem with it, but this isn't standard or allowed by the code to have that many splits off of a property.

Attorney Biege stated he thinks that's why they are here asking for a minor because they can't do it as a matter of right.

Michael Polan stated he believes each parcel number gets one (1) split. If they want to split more than that it has to be a minor sub which is why they're here tonight.

Glen Minich stated it's fine, but his point is that somehow, they have allowed this parcel to be split four (4) times and now they are going to split one (1) of those splits four (4) more times which is fine, but he's saying that it shouldn't be a common occurrence. It looks like maybe it happened when the trust formed it split without being subdivided.

Attorney Biege stated that may be true, but under the rules if they can do that, they can do that. It doesn't matter about the owner; if they had separate parcel numbers, they could split those parcels and they're not considered. . .

Glen Minich stated they're not considered as a split before the code was written.

Attorney Biege stated probably.

Remonstrators:

Lisa Pierzakowski stated her address is 3511 W. Johnson Rd., LaPorte, IN. Her brother-in-law's property backs up to this and he brought it to her and asked some questions. She is just going to ask the same thing; there are four (4) lots and she knows he tried to explain it, but she isn't understanding. The first lot is seven-point-three-five (7.35), the next one is two-point-eight-six (2.86), the next one is two-point-nine-one (2.91), and the last one (1) is two-point-nine (2.9). This

description and public notice was for one (1) parcel, but it says ten-point-two-one (10.21). There's not one (1) parcel that is ten-point-two-one (10.21). The one (1) parcel that is listed on the public notice is only seven-point-three-five (7.35). If they're going to use the seven-point-three-five (7.35) and the two-point-eight-six (2.86) which equals ten-point-two-one (10.21), wouldn't they have advertised for the two (2) parcels because she only sees one (1) parcel was noticed. No? It's confusing. Like mentioned, there are four (4) and now they're going down to two and a half (2½)?

Attorney Biege stated she asks her questions and then the Board will call Matt up to explain.

Lisa Pierzakowski stated that is her question. Her brother-in-law had some questions also.

Don Pierzakowski stated his address is 3934 N. US 35, LaPorte, IN. What will the covenants for the subdivision be? Is this a first phase or will they then continue on to putting in more of a subdivision or not? That's what he is trying to get across and find out the information on that.

James Misiukiewicz stated his address is 3978 W. Schultz Rd., LaPorte, IN. He lives right across the street from this land in question. Fourteen (14) years ago, they approached this board with a subdivision that was going to be fifteen to sixteen (15 – 16) lots and it was shut down by the Health Department because of septic problems; he has a copy of it with him. He has some copies for the Board.

Adam Koronka stated yes, please.

James Misiukiewicz stated it was not approved like he said. It was shut down because he was at the meeting.

James Misiukiewicz passes out copies of the letter from the Health Department.

Harold Parker asked if Michael Polan had been out to look at it. Does he know anything about it?

Michael Polan stated he is familiar with the site.

Harold Parker asked him what he thinks.

Michael Polan stated they had Plat Committee and the Health Department is performing their role. The required soil boring reports for this project will either meet their criteria or they won't. The Health Department will approve or not approve based on those reports.

Harold Parker asked what the letter is.

Michael Polan stated it is an old letter from 2008 and it is setting parameters for an exception for Lots 1 and 2 that would require perimeter drain outlets. That's pretty standard. Matt had mentioned that these will have perimeter drains, but they can confirm when he comes back up. The letter has no bearing on the current Health Department administration review over this project. There will be new soil boring reports and they will either be approved or they won't be.

Glen Minich stated he knows that James lives in that area and he has driven through the area a lot. James' lot to the south has water run down the road. This area is known for odd springs that pop out of the ground wherever they choose to pop out of the ground. The only thing they need to be careful is that they don't have the same situation they have now that they are going to talk about later because any one (1) of these lots could develop a spring and they can't stop it. There's one (1) down the road, the driveway was put in, it was being excavated, they hit a spring, and it took them forever to stop it. Whatever they do they have to be careful with. That kind of situation is not on them.

Michael Polan stated for their purposes, they will be interested in surface water and stormwater management which is covered in the lot size and the infiltration with the seeded and vegetative lots. As far as the septic, none of them that are present tonight are the septic experts; that will be the Health Department. They will require the soil boring reports from a soil scientist and they will make their approval or denial based on those reports.

James Misiukiewicz stated it seems to him that they have already done that. The letter is from the Health Department Michael Polan is speaking of? And it's misleading because it's not the same as what was there fifteen (15) years ago. Lots 1 and 2 were all the way back up near the junkyard. Lots 1 and 2 now are right across the street from him. Like Glen said, there is water running through there all the time. That's all he has to say. He's not trying to stop this just want to make them aware of what they Health Department said fourteen (14) years ago; it was a no go.

Jeff Wright asked Matt Garritano if he wanted to see the letter from the Health Department.

Matt Garritano stated he can take a copy of it for the folder. The soil report information was provided to the Health Department in technical advisory so they are talking about perimeter drains as a possibility, but there is plenty of relief on the lots to accommodate that so it wasn't a situation where it was suggested warranting doing new borings or it was a situation where lots were not going to be buildable. That was never brought up. Back to the acreage portion and the ten-point-two-one (10.21), with the multiple parcel ID numbers and the way that they are presenting this one (1) now. The parent parcel itself is ten-point-two-one (10.21) in the deeded description, but there is also a deed exception to that which already makes it smaller. If they look on the first sheet, the description starts with the larger piece and lessens out which is common practice for trying to maintain the history or the change in the parcel instead of rewriting another proposed description, they are taking the original and lessening out the two-point-eight-six (2.86). From that, they are then doing this minor sub petition. A portion of that, which is two-point-eight-four (2.84), which is at the very top, is not labeled a lot number. That will remain the dominant parcel remainder and that is how the math adds up. The rest of it will fall in the deeded dedication for the right-of-way for the road. As far as the phases go, this is it. Originally, they went with fifteen (15) lots; that is done and gone with. If this minor goes through, that is it for the Trust. There is nothing else to develop unless they sell one (1) of the larger pieces that are outside the bounds of this petition to do something else, but he can't say whether or not a perspective buyer is going to do that or not. That's pretty much it.

Earl Cunningham asked if any of the other property is currently for sale.

Matt Garritano stated he is not sure. He'd have to pull up Beacon and see if the Trust is still the present-day owner. He can't say whether or not it is for sale or not. He would assume if they are

preparing the petition for this three (3) lot minor then the remainder, since the fifteen (15) lot has changed course, he would assume.

Adam Koronka stated there was a question on covenants and he sees in the petition that there will be copies of proposed prospective covenants and restrictions that will be furnished to the County Plan Commission at the time of the public hearing.

Matt Garritano stated yes. He has a set that he can give to them right now if they want. He doesn't have a full set for everyone.

Adam Koronka stated it's mostly for the second phase, is it not?

Matt Garritano hands out restrictive covenants.

Adam Koronka stated for the public, there is another phase of this where it comes back around to them and that is where the covenants come into place.

Attorney Biege stated they can come in at any time, but this is primary approval so as they progress, they will have to come back for final approval before they start building.

Adam Koronka stated in general from what they see here, it is all in order and there is quite a bit of work behind it.

Rita Beaty asked Matt if he could clarify the acreage because she can see Lisa's face back there and she has been adding like crazy on her calculator.

Matt Garritano stated if it's okay to bring her up there he can walk her through with the plat.

Rita Beaty stated she can see she is still frustrated over that. Maybe give her a little heads up on it a little bit.

Lisa Pierzakaowski stated she's trying to figure it out because it definitely says four (4), but he keeps saying three (3).

Matt Garritano stated the dominant is truncated to try to get it to fit on the print, but inside that dominate there is a deed exception so it is going right off the top and that is the other piece. So, there is the deed less that which is outside. The bounds are the seven-point-three (7.3). There is the portion that will remain the dominant parcel which will retain the parcel ID number and then there is all the rest. Does that help?

Lisa Pierzakowski stated she sees what they are doing now. That makes sense. Thank you.

Jeff Wright stated he is reading from the 2008 letter and almost the last paragraph says that if perimeter drain outlets cannot be established then goes on. The Plat Committee Meeting says that each of the systems are going to have to have perimeter drains and there is plenty of relief to put the perimeter drains in and he thinks that is what the letter requires. It says if they are going to put

septics out there, they have to have perimeter drains. He doesn't read the letter as stopping the subdivision somehow. It just says if they are going to put in septic systems, then they have to put in perimeter drains. And the Plat Committee says they have to put in perimeter drains.

Michael Polan stated he would concur with that.

Earl Cunningham stated it is easier to do that with less than fifteen (15) lots.

Matt Garritano stated yes, absolutely.

Glen Minich stated his only question would be to Doug. What is their due diligence and what do they do knowing that there are some water issues with springs? He thinks the subdivision is fine, but can they put something in?

Attorney Biege stated they can at the end. There is still a ton of work to be done in between. Plat Committee isn't done; it will continue to work on it. There is a misnomer here that will talk about more in a minute, but there is no liability or responsibility on the County at all. That is a contractual relationship between the seller, the buyer, and the builder. Either way, there will be a ton of looking at this in between. If they want to make a condition on primary approval they can certainly do that, but he doesn't know what condition he is thinking of, but they can make a condition on moving forward.

Glen Minich stated he doesn't know what the condition would be.

Attorney Biege stated subterranean waters are problematic. He doesn't know how they manage that from a legislative standpoint.

Glen Minich stated if the condition is that each lot has that written in its' description that there is subterranean water in that area and the buyer should be aware.

Attorney Biege stated okay, but he's seen it, but otherwise where is the proof. Before the County is going to impose a condition, they can't just say they know it has been that way.

Glen Minich stated he has driven down there and the water in the spring runs down the roads and it just comes and seeps out of the ground.

Attorney Biege stated he isn't disagreeing. He isn't arguing either way. He has to write this. How do they establish where a subterranean water issue will be and/or how do they monitor or identify them. He doesn't know so he is asking. He doesn't know how to do that other than when they build. Is there a way to tackle that?

Matt Garritano stated the only documentation up until this point would be their seasonal high water table indicators in the soil report which three (3) borings have been done on each of the fifteen (15) lots and that may have been the reason to stem for the perimeter drain suggestion in the letter. Other than pointing back to that soil report for each lot in between buyer, seller, and builder that is about it.

Jeff Wright asked if it is possible at this point and say and require that each structure on each lot shall demonstrate proper subterranean subsurface hydrogeologic remediation of water so they don't end up in another subdivision with flooding.

Attorney Biege stated he is the engineer, but from his understanding that is the information the soil report gives them which is required and reviewed by the Plat Committee. Is there another mechanism?

Jeff Wright stated there are. They are looking at soil borings for septic and he thinks that the issue that they are trying to get at is that they want protection on the structures themselves, not necessarily the septic fields, for a basement if there is a basement.

Attorney Biege asked what do they require if they approve this?

Jeff Wright stated subsurface hydrogeologic remedy to protect the structure.

Michael Polan stated when they do a soil boring report for a septic they go down five feet (5') which is typically what the handheld machinery would let them do, but if they put in a nine-foot (9') basement and all they have is a soil boring report for septic, that won't cover a nine-foot (9') basement. It's missing four-feet (4') of depth.

Attorney Biege asked if perimeter drains are always required.

Michael Polan stated no.

Attorney Biege stated what if they required perimeter drains on all basement constructions.

Jeff Wright stated he doesn't want to sit here and try to design a basement, but that would be a great step forward.

Attorney Biege stated he isn't arguing the point, he just has to draft it so they have to be able to specifically identify what it is they want that way they can say perimeter drains will be required in the design phase.

Jeff Wright stated yes and a sump pump.

Attorney Biege stated okay.

Rita Beaty stated her problem with this is if they start labeling these particular lots. They are saying these lots are going to require this without this other test that they are mandating that they are not going to go nine feet (9') to see what is going on and the next guy goes and builds and says, "How come you made me do this? You didn't make him and he is putting one there." How can they forecast the fact that they can make one (1) person do it, but not another person two (2) miles down the road because neither of them did that test. Now, going back, they require the perimeter drains which should be done regardless, but they require them and then something happens where the

perimeter drain doesn't function, where are they going to go because they County said they had to do it, but it still didn't work. Are they opening up that can of worms.

Attorney Biege stated no. That's where the Board is missing the boat on this whole thing and the County Council from what he's learned. There is no liability for the Plan Commission.

Rita Beaty stated she has seen it enough.

Attorney Biege stated they can establish rules for this subdivision, but not for individual lots. The responsibility for the Building Commissioner is to inspect pursuant to the Building Code. That's it. It is an administrative act. The code says this, they inspect it, and it's good. He has handled enough construction cases over the years; anything other than that is up to the contractor and if there is an engineer involved and the homeowner.

Jeff Wright stated there are other subdivisions where they have had soil borings and they only go down the five feet (5'). He can think of one (1) where they are spending a million dollars (\$1,000,000) to go back and remedy. That falls back on that County.

Attorney Biege stated it doesn't have to. Although he commends the decision, but that was a discretionary decision on the County. It was not a mandatory act. He thinks the right thing to do is to fix it and they may still have this issue with some older subdivisions, but it wasn't a liability. It wasn't required. He thinks the elected officials chose to do the right thing, but that was a choice. It's a big difference.

Michael Polan stated he was the one who lobbied the Council for that as part of his former position. To piggyback on what the attorney said, the County was not under any liability or obligation to step in and fix that problem. There are many isolated problems throughout the County where people have built many, many years ago or they are the lowest elevation around and that's where the water goes and that is on them. The situation in Meadowview is that when they have twenty-seven (27) plus homes on the same road or vicinity that are experiencing the subterranean water and there are that many right in that concentrated area and their only remedy is to pump onto their County roads and infrastructure, they are now entering a situation in which they can't put their own lift station in. They can't mitigate that problem on their own. It takes government to step in and solve that problem even though they were not obligated to or under any liability to. How else do they solve that problem? That's what happened with the Meadowview situation.

Jeff Wright stated he thinks they can do better than soil borings. There's not going to be engineers probably on these residential things looking at these kinds of things to put stuff in to do the remedy. Probably not.

Attorney Biege stated that's a discussion for Meadowview, not this petition. He doesn't want to get caught up in larger County issues when they have one (1) request for one (1) minor subdivision.

Jeff Wright stated those comments were for that.

Michael Polan stated as Attorney Biege said, they can impose conditions on any approval. To briefly discuss what Rita said, some of these are on a case-by-case basis. There is no way that every problem can be foreseen and known before it happens, but in a situation where there is a known problem, there should be a form of disclosure or something to address that.

Jeff Wright stated they are in the early start of this process. They are coming back again; can something be thought through rather than try to solve it tonight and add that condition later.

Attorney Biege stated absolutely. They could also impose a condition that they explore this and come up with a remedy during the next phase because they're just in primary plat right now. They can instruct the Committee to examine and come up with a remedy for the Commission's concerns for subterranean water.

Jeff Wright stated that would make a nice motion.

Glen Minich made a motion for a favorable recommendation for Petitioner William L. Sebert Etal Trustees Trust dated 8/28/87 represented by Matt Garritano of Charles Hendricks & Associates P.C. for a primary plat for a 3 Lot Minor Subdivision to be known as "Sebert Acres Minor Sub." located immediately north of Schultz Road, east of County Road 400 West, LaPorte, IN. Center Twp. Zoned R1B consisting of 10.21 acres (parent + 3 lots). The subterranean water must be addressed during the next phase of Plat Committee. There will be no improvements needed to be placed in the subdivision. No public water or sewage facilities available. Lots will be serviced by private wells and septs.

John Carr seconded.

All approved. Motion carries 9-0.

Old Business:

1. Meadowview Discussion

Michael Polan stated since their last meeting he has drafted a couple of documents. Things that are going to be legal issues he obviously runs past their attorney and as he has stated, since they do not have liability, rather than a hold harmless agreement, a disclosure would be a better route to go. He is going to change what he has submitted to him based on their discussions and he can let Doug elaborate on that.

Attorney Biege stated the zoning code refers to a disclosure. He is not sure the disclosure is very well worded, but keep in mind that from a government standpoint, the Plan Commission can only go so far. They cannot tell somebody they can't sell a lot. That's a taking; an unconstitutional taking. But they can certainly warn people. There are two (2) things they can do here. They can warn them or they could down the road, which they don't have enough information to do it tonight, but they could require deeper soil borings, but then they have to have an expert analyze those deeper soil borings and he's not sure that would take care of the subterranean problem, but they can't do it per lot. They will have to do it across the board and everybody is going to have to be

treated the same. Disclosure or more strict requirements? Those are their two (2) choices. Those more strict requirements have to be equally applied across the board to not subdivision, but to new residential construction or commercial if they want to go commercial too, but they would have to figure that out. That would require a committee and some work with some experts and drafting to come up with some proposal for the Plan Commission to review. He wants to reiterate, that Mike is right, and when he was County Attorney, they handled some areas where there was actual supplemental land contouring construction where the County steps in and fixed the road because they had flooding because somebody did something after initial construction. He doesn't think they will ever get away from that. This is a contractual relationship between the seller, the builder, if there's an engineer involved, and the buyer. He thinks the Plan Commission needs to decide if they are going to create new regulations or are they going to warn. If they are going to warn, then Mike and he can come up with something to present to the Plan Commission at the next meeting. If they are going to come up with more strict regulations, he recommends that go to committee because that is going to take some hashing out.

Adam Koronka stated his personal thoughts are that stronger regulations would be more cost for the test to be collected, more cost for the test to be analyzed, and it goes everywhere for new construction from LaCrosse to Hudson Township and it would just start to drive building costs up all the way around. Personally, a disclosure seems more appropriate. Are they talking about something that is more appropriately drafted up between the Building Commissioner and the Attorney or something they need to explore as a sub-committee coming out of the Plan Commission.

Attorney Biege stated he doesn't think a disclosure document really needs a committee. If the Plan Commission wants to go by way of disclosure, he thinks he and Mike can work something up and then they can tweak it from there if the Plan Commission wants to make changes.

Michael Polan stated they can bring it back to them. Whatever he and Attorney Biege come up with they can bring it back and present it for discussion.

Adam Koronka asked if anybody has any different thought.

John Carr stated no. He agrees. He would rather see a disclosure.

Michael Polan stated he will draft something and run it by Doug. Between the two (2) of them they will change what started out as a hold harmless to a disclosure document and they will bring it back to this Commission.

Attorney Biege stated as he foresees it, they will do it kind of like they do for the farmers on residential new construction; it's a warning really. They do the same thing on all new residential construction in Ag zones. It's a disclosure document that they give them and it would probably work similarly how they handle the agricultural community.

Adam Koronka stated it sounds like a fair plan to him.

Earl Cunningham made a motion to approve the Building Commissioner and Plan Commission Attorney to draft a disclosure for discussion.

John Carr seconded.

All approved. Motion carries 9-0.

2. Discussion on Limiting Solar Panels

Attorney Biege stated there may be some confusion on how the different Commission's work. The Plan Commission deals with subdivision, vacates roads, and passes Ordinances with regard to zoning. That's all they do here. If they don't like the decision the Board of Zoning Appeals made, they don't have authority to do anything here. The way an Ordinance is passed, there is a request. He read the request and it looks like there is request for solar panel coverage because they just entered a Solar Panel Ordinance. If they are not aware of that, get online and read it because they spent a lot of time on that Solar Ordinance. They can put in solar as a matter of right so long as it complies with the ordinance. It looks to him like they have a request for coverage on lots or on farm land. That's a little bit different issue than what they passed and he doesn't think the Plan Commission has taken a look at that. So, they have a request to take a look at that. They also have a request on the battery issue. Now, they can make a written request, but they do not take public comment in Plan Commission. What happens is, a request is made, they decide if they want to set an exploratory committee and what they may want in it. Then they ask him to draft it where it is then distributed to the public. If they move forward, there will be a public hearing. That's when everybody talks either pro or against. The reason he says that is because it is a legislative process. They have to follow the pattern. His job is to make sure they pass it properly so whatever is passed, which is up to the Plan Commission, not him, he has to make sure that he can defend it later on when it is challenged. He's not trying to prevent anybody from talking. His point is that now is not the time. They have to follow this because if an ordinance is later on challenged, they are going to look at how it was passed and if the rules were followed and if proper steps were followed. His job is to make sure they are following the proper steps. If they don't like the BZA's decision their recourse is circuit court. They have thirty (30) days to file an appeal with circuit court. There is a whole bunch of law that tells them how to do it. Hire a lawyer to do it; trust him. That isn't going to happen here though. They are forward looking at Plan Commission. What rules, if any, are they going to pass looking to the future and future requests. If there's an ordinance it probably won't go in front of the Board of Zoning Appeals depending on what they come up with. Does that make sense to everybody? He thinks the issue to the Plan Commission tonight is, do they wish to form a committee and if so who will be on it for entertaining solar coverage and then a second committee looking at any battery storage facility connected the power grid; he would put it that way because it's not just lithium-ion. That's his best explanation to what they are doing tonight.

Anthony Hendricks, County Surveyor, stated that as a member of the Plan Commission, if they would like, he would like to be on that committee. He has worked very closely with Starke County and Pulaski County and the solar panels down there. The individuals down there and the courts it's running through right now, Pulaski County is in appeals court over solar panels, he would be willing to serve on that committee if they would like to because it has been a whole bunch of fun in Starke and Pulaski County.

Harold Parker stated if Tony is going to chair it, he would be on the committee.

Rita Beaty stated she will make a motion if Tony would like to chair the Solar Panel Committee and if Harold wants to volunteer to be on it and anybody else that wants to.

Attorney Biege stated they need to be specific because they just passed a solar ordinance; this is on solar coverage only or are they looking at modifying the existing ordinance.

Glen Minich stated it's such a political, social, and economic issue as property rights of the landowners verse the scope of how many solar fields they can put up in the County.

Rita Beaty stated she would say modify. What would Tony like to do?

Anthony Hendricks stated they need to modify and look at the coverage. It would be some sort of editing modifying coverage. Whoever wants to be on the Committee, they have nine (9) members, and they can only have four (4).

John Carr stated he will be on it.

Anthony Hendricks stated they can look at the editing and modifying in the coverage area in the land use. They can't delve into the economy of it. It's a question of land use and they can only have four (4) members since they have nine (9) and four (4) is not a quorum so they can have up to four members.

Adam Koronka stated he will take the open seat.

Rita Beaty made a motion to establish a Solar Panel Coverage Committee to amend the existing Solar Ordinance consisting of Anthony Hendricks, Harold Parker, John Carr, and Adam Koronka.

John Carr seconded.

All approved. Motion carries 9-0.

Adam Koronka stated onto the other issue. When it comes to batteries, they don't currently have an ordinance.

Attorney Biege stated BZA had two (2) requests, both of them went through, but they weren't done willy-nilly. They have nothing in the code. So, as the BZA Attorney, he made the judgment call to call it a Special Exception. A Special Exception is the closest look they can look at any application for a variance and the conditions are pretty unlimited. What occurred in front of the BZA for two (2) different facilities, he and a couple members of the BZA and the public worked on exception to a grant. The ten (10) exceptions that were set out, and if anybody wants to know what they are he has them with him and they can talk after the meeting, but those ten (10) exceptions made the BZA comfortable. At the same time Representative Jim Pressel, who got up and spoke, and he has talked with him since, the legislature is looking at drafting something also. He's not saying they don't need

a committee; he just wants to bring them up to speed on what has occurred to date. Right now, they have nothing, but there is a set of federal regulations. What they did was, nobody in the County is equipped to inspect this stuff, so one of those exceptions was the petitioner is paying for each one separately an amount up to thirty thousand dollars (\$30,000) where they are going to hire their own engineer to look at them. The petitioner is also going to pay ten thousand dollars (\$10,000) a year to have it inspected. They are going to pay somebody that knows what they are doing to look at this. This kind of gives them an idea on the framework on what has been granted. There are a whole bunch of other requirements they have in there and that's how they handled it in case anybody was curious.

Adam Koronka stated one (1) other thing that is pretty important is that they had them push off the ability to pull building permits until after the State legislature meets and looks at their own coverage because right now there isn't a whole lot from the State.

Attorney Biege stated Representative Pressel told him that this is on the legislature's agenda or whatever committee it is to look at. So, if they form a committee to look at an ordinance because they need something unless the State passes something, but what do they do as a stop gap until that is done. He thinks it's a good idea to form a committee to take a look to see if the County wants to try to draft an ordinance and he emphasizes that because this is very, very complicated and there are a lot of variations of the type of batteries or proceed, if there are any more variance requests, like they did with the last ones because he is pretty comfortable with what they did. Agree or disagree with the decision, he thinks they were good protecting the County and the citizens with it.

Michael Polan stated he agreed with their counsel's statement. He would add as a public statement that just because just those two (2) facilities passed step one (1), which is preliminary, that does not mean that those will ever come to fruition. It does not mean that they will ever be developed or that they will ever make it passed the finish line. They made it past step one. There is a long process to go. If they were to make it all the way to the end, they could possibly and potentially apply for building permits in 2024 to break ground, but as stated, there is a lot to go through between now and then and it may or may not be allowed to proceed.

Rita Beaty asked if they are comfortable paneling it like they did until they hear from the State then. Are they covered there?

Attorney Biege stated they have never had anything like this before so as the BZA Attorney he tried to make sure they were covered wherever they can, but this is so new and they have so little information to work with. He is okay with what they did, but he would like somebody to take a look at it to make sure until if and when the legislature comes up with it, that the Plan Commission is okay and makes an affirmative decision as to whether they handle in the BZA with exceptions or they draft an ordinance. This group needs to decide how they are going to handle it until if and when the legislature comes up with something because his experience has been that the legislature does not come up with legislation very quickly. If they start the committee next year, he is pessimistic they will have legislation the following year. That is based on his experience. He doesn't want them hanging out there five (5) years without a committee at least taking a look at it and making an affirmative decision on what they are going to do moving forward or at least for a certain period of time.

John Carr asked if they know if Howard County or St. Joe County has any kind of ordinance.

Attorney Biege stated no, they don't. He didn't find anything anywhere.

Anthony Hendricks stated he didn't find anything either. This is an extremely tough one (1).

Attorney Biege stated he thinks the reason no county has drafted one (1) is because it is so technical and there are so many things they could miss at the county level. Drafting an ordinance would require expert input which they would have to get funding for if they're going to do it. There's no way he has the ability or knowledge to draft a competent ordinance because there are so many technical issues involved in this. The counties and the State are kind of pushing it off because they also have IRC, the State legislature, MISO, and other multiple entities involved. There is also a set of federal regulations that monitor all this. Let's assume for the purpose of the statute, they come up with something and they come up with an ordinance, they need to see how viable a local county ordinance is that at a minimum, needs to be examined. Anything we come up with has to be inspected and if they don't have the technical expertise to inspect it, then they have to figure out some infrastructure to perform the inspection. Same thing on the ten-foot (10') soil boring; who is going to look at them and determine they are okay because they don't have the people to do it, but that's because this is all new. He does think the Plan Commission needs to take a look at it and come up with some decisions and conclusions as to what they are going to do if and until the legislature passes something. That's one (1) reason why one (1) of the conditions was that they can't even apply for a building permit until 2024 because in the meantime they may get something from the State.

Anthony Hendricks stated he would suggest not a committee just yet, but to wait one (1) more month because some states are dealing with this such as Wyoming, Nevada, and California. They are already running through some of this stuff and they already have some of these facilities running, but they are crossing a lot of states. Their laws are a lot different than Indiana's laws. Just like they did with the subsurface drainage, pull up anything they can find on the Internet and start getting their heads around it. He doesn't see how one (1) more month is going to hurt them to bring it back up and decide which direction they want to go because it is so new.

Attorney Biege stated they don't know, but he would be surprised if they get any more petitions in the near future. They have the two (2) that went through, but they are some pretty major projects. He thinks they would be okay if they want to wait for a month or two (2).

Anthony Hendricks stated even the State legislature is stumped here. Everyone is.

Michael Polan stated they worked with several individuals who put their heads to the grindstone and started looking stuff up. They had some guidance with the NFPA 855. They found SOPs from the University of Massachusetts handling storage and stuff like that. That SOP is Standard Operating Procedure. The State legislature is taking it up. They worked with what they had, but as far as what their Attorney stated they do not have state ordinance or local ordinance as of yet, but that doesn't mean that there wasn't due diligence put in to it in processing that preliminary step. That included meeting with all the First Responders, Fire Chiefs, EMS, and Hazmat. Again, the National Fire

Protection Code and the SOPs from other agencies that had experience dealing with it. They did that in the absence of a local ordinance.

Attorney Biege stated to keep in mind, if they pass an ordinance, whatever it might be, and modify the current zoning code to say it is a Special Exception, every time it goes in front of a BZA. Every facility will have to go in front of the BZA. His worry as the Board Attorney for both boards is that if they pass an ordinance and it complies with the Ordinance, they won't have to get permission. They could put it in as a matter of right and that concerns him because it is so new. What if they miss something? They could just put them in. He thinks at some point they need an affirmative decision from this Plan Commission because they need to decide they will do it a certain way or wait until such time and in the meantime deal with it like they have been, whatever that decision is. He thinks that eventually something needs to come from the Plan Commission, but it doesn't need to be immediate.

Michael Polan stated Tony stated maybe they should wait a month. So, they formed a committee on the solar. How about the next time this Commission convenes, they put lithium discussion on the agenda and see if a committee needs to be formed and go from there.

Adam Koronka asked if they need a motion.

Attorney Biege stated it's not technically on the agenda yet so they don't need to table it. They'll just put it off until the next agenda.

Anthony Hendricks stated this leaves it up to the public. If they have anything they can forward it to Mike or him.

Attorney Biege stated he wants to make sure they are clear that if there is something that comes from the public, it needs to come in on the record. They can't just send stuff around. If there is something they can contribute to drafting the ordinance, they welcome that, and please send it. If they want it in evidence when an ordinance is passed or not, they have to redo it. He has to have a record.

A woman from the audience approached the podium and stated that her farm is going to be in six (6) generations with her grandkids and there is a rumor that they want to build a solar across from them. How can they stop it?

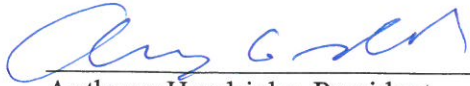
Attorney Biege stated they can't comment on that.

The woman stated she is just saying. And where they want to build the battery thing; have any of them been out there and seen the land? It floods.

Attorney Biege stated she is not hearing him. The BZA made a decision. If she doesn't like it, get a lawyer and appeal it. The Plan Commission can't do anything about it at all.

Adam Koronka asked for any new business.

There being no further business before the Plan Commission, meeting adjourned at 7:02 p.m.



Anthony Hendricks, President



Michael Polan, Recording Sec.